

**DEC 12 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

REY ROCKY RAMIREZ-GOMEZ,

Defendant - Appellant.

No. 04-10389

D.C. No. CR-03-20075-JF/PVT

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Jeremy Fogel, District Judge, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Rey Rocky Ramirez-Gomez appeals the 46-month sentence imposed following his guilty plea conviction to one count of reentry by a deported alien in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because Ramirez-Gomez was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

**REMANDED.**